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Supreme Court of the United States

OCTOBER TERM, 1902.

No. 252.

THE UNITED STATES, APPELLANT,

v.

ARTHUR B. BARRINGER.

BRIEF FOR APPELLEE.

I.—STATEMENT OF THE CASE.

Question Involved.

This case raises the question of the right of employees of the Government Printing Office temporarily serving for fractional parts of a year to leaves of absence or to *pro rata* pay for unused leaves.

The claimant served between the 31st day of December, 1895, and the 27th of April, 1900, for five (5) separate periods, the shortest of which was twenty-nine (29) days and the longest seven (7) months and six (6) days. He was paid for his daily services at the rate fixed by law. He did not, however, receive any leave of absence or pay for unused leaves. Whether he is entitled to such pay is the question in this case.

Facts Found by the Court of Claims.

The facts found by the Court of Claims (Record, pp. 2, 3) are as follows:

I. The claimant, Arthur B. Barringer, was from time to time employed as a compositor in the Government Printing Office during the following periods:

December 31, 1895, to February 26, 1896, inclusive;
July 2, 1897, to July 31, 1897, inclusive;
December 10, 1897, to July 16, 1898, inclusive;
October 24, 1898, to March 4, 1899, inclusive;
October 28, 1899, to April 27, 1900, inclusive,

aggregating one (1) year eight (8) months and twelve (12) days.

II. During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months.

III. He was not during any of the times of his employment allowed leave of absence or *pro rata* pay for leave of absence. If allowed leave of absence of thirty (30) days a year he would have been entitled to fifty-one (51) days' leave.

If instead of taking such leave he had been paid *pro rata* for the same, he would have been paid three dollars and twenty cents ($3.20) a day for thirty-six (36) days and four dollars ($4) a day for fifteen (15) days, amounting to one hundred and seventy-five dollars and twenty cents ($175.20).

IV. The claimant did not at any time during his several terms of service set forth in finding I apply for a leave of

absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave.

V. All employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all accrued but unused leaves of absence. The last of the appropriations for such unused leaves was that of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60), made by the act of July 19, 1897 (30 Stat. L., 134), and was based on an estimate of the Public Printer, who in transmitting the same to the Senate informed that body that it included "many employees whose terms of service in the office were only for periods of less than one year," and that "the amounts of *pro rata* leave which accrued to such persons are herewith included in the respective years in which they were earned."

Judgment and Appeal.

The court held, in an opinion by Judge Howry (Record, pp. 3–6), that the claimant was entitled to recover *pro rata* pay for his accrued but unused leaves of absence, and gave judgment (p. 7) in his favor for one hundred and seventy-five dollars and twenty cents ($175.20), (37 C. Cls., 1).

The United States appealed (p. 7).

Rate of Compensation.

The rate of compensation in the Government Printing Office is limited by the act of February 16, 1877, chapter 58 (19 Stat. L., 231), to "forty cents per hour for time work to printers and bookbinders." By act of March 3, 1899, chap-

ter 424 (30 Stat. L., 1119), this limit was raised for the fiscal year beginning with the 1st of July following to fifty cents per hour, and by the act of June 6, 1900, chapter 791 (31 Stat. L., 643), the increase to fifty cents per hour is made permanent. By act of March 3, 1891, chapter 550 (26 Stat. L., 1084), night work is to be paid for at 20 per cent. more than day labor.

The claimant in this case received payment for his services at the rate, first, of forty cents per hour, limited by the act of 1877 (equivalent to $3.20 per day of eight hours), and afterwards of fifty cents per hour, limited by those of 1899 and 1900 (equivalent to $4 per day) (Finding II, *ante*, p. 2).

Acts Allowing Leaves of Absence—1886, 1888.

The first act allowing leaves of absence to the employees of the Government Printing Office was that of June 30, 1886. By that act, chapter 572 (24 Stat. L., 91), entitled "An act granting leave of absence to employees in the Government Printing Office," it is provided:

"That the employees of the Government Printing Office, whether employed by the piece or otherwise, be allowed a leave of absence, with pay, not exceeding fifteen days in any one fiscal year, after the service of one year and under such regulations and at such time as the Public Printer may designate. Such employees as are engaged on piece-work shall receive the same rate of pay for the said fifteen days' leave as will be paid to day hands:

"*Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment.

"SEC. 2. That this act shall take effect on and after the first day of July, 1886."

By act of August 1, 1888, chapter 722 (25 Stat. L., 352), entitled "An act to extend the leave of absence of employees in the Government Printing Office to thirty days per annum," it is provided:

"That the act entitled 'An act granting leave of absence to employees in the Government Printing Office,' approved June 30, 1886, be so amended as to extend the annual leave of absence therein described to thirty days in each fiscal year:

"*Provided*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of a year."

Harrison v. United States, 26 C. Cls., 259; 1891.

Under these acts of 1886 and 1888 a suit was brought in the Court of Claims by an employee of the Government Printing Office for the recovery of payment for leaves of absence to which he became entitled and which had not been allowed to him (*Harrison v. United States*, 26 C. Cls., 259).

The court held that "The purpose of the leave-of-absence laws (30th June, 1886, 24 Stat. L., 91; 1st August, 1888, 25 *id.*, 352) is to restrict work, not to increase wages" (Syllabus, paragraph 1, p. 260). Also that the Public Printer "cannot grant constructive leaves of absence to persons who have ceased to be employees, nor pay to employees a money equivalent for leaves of absence" (par. 4, p. 260).

Consequently it was held that "a payment made to a man after he has ceased to be an employee in lieu of a leave of absence which he was entitled to but did not take is unauthorized and forbidden by law" (par. 5, p. 260).

As correctly stated by the Court of Claims in its opinion in this case (p. 4), while the decision in *Harrison v. United States* is accepted by counsel for plaintiff as a correct exposition of the law at the time it was rendered—April 13, 1891—"nevertheless it is contended that subsequent legislation has made the views there announced inapplicable to a claim for unused vacation pay."

Acts Allowing Pro Rata Pay for Leaves, 1894, 1895, 1896.

On June 19, 1894, the following was enacted in "An act making appropriations to supply a deficiency in the appropriation for public printing and binding for the fiscal year 1894, and for other purposes":

"To enable the Public Printer to pay to the employees heretofore or now employed in the Government Printing Office since July first, eighteen hundred and ninety-three, such sums as may be due them for leaves of absence, notwithstanding the fact that thirty days' leave of absence, with pay, had been granted to such persons in said fiscal year on account of service rendered in the preceding fiscal year, and also to pay all employees of the said office any leave of absence which they may have failed to obtain from the lack of necessary appropriations or other cause, sixty-five thousand dollars, or so much thereof as may be necessary.

"Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year" (28 Stat. L., 94).

"An act providing for the public printing and binding and the distribution of public documents," approved January 12, 1895, contains the following:

"SEC. 23. The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year.

"Such employees as are engaged on piece-work shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands:

"*Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment:

"*And provided further*, That it shall be lawful to allow *pro rata* leave to those serving fractional parts of the year" (28 Stat. L., 604).

In "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1895, and for prior years, and for other purposes," approved March 2, 1895, the following was enacted:

"To enable the Public Printer to comply with the provisions of the law granting thirty days' annual leave to the employees of the Government Printing Office, fifty thousand dollars, or so much thereof as may be necessary, and the Public Printer is authorized to pay *pro rata* leave of absence to any former employees of the Government Printing Office who have during the present fiscal year resigned, died, or otherwise severed his or her connection with the office, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees during the fiscal year on account of service rendered in a previous fiscal year.

"Hereafter the Public Printer is authorized to pay *pro rata* leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year" (28 Stat. L., 868).

The following was adopted in the act of June 11, 1896, chapter 420, being "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes" (29 Stat. L., 453, 454):

"The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations

and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year.

"Such employees as are engaged on piece-work shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands:

"*Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, *pro rata* for the time of such employment:

"*And provided further*, That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year.

"And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may hereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office, for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence."

Retroactive Allowance for Unused Leaves, 1897.

In the same Congress, on the 10th of June, 1896, on the day before the act last cited became a law, the following occurred in the Senate, as shown by the Congressional Record, Fifty-fourth Congress, 1st session, part 7, p. 6367:

"Mr. Gallinger submitted the following resolution; which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Public Printer be, and he is hereby, directed to communicate to the Senate the names of all persons who were employed in the Government Printing Office

in the fiscal years (each year separately) 1890, 1891, 1892, 1893, and 1894, who failed to receive their annual leaves of absence during those fiscal years, and the amount due each person for each fiscal year separately on account of such failure."

This resolution remaining unanswered, the following action was taken by the Senate January 2, 1897, as shown by the Congressional Record, 54th Congress, 2d session, part 1, p. 485:

"Mr. Lodge submitted the following resolution, which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Public Printer be, and he is hereby, directed to send to the Senate the information called for in the resolution of June 10, 1896."

On January 13, 1897, in the Senate proceedings, as shown on page 743, volume 29, of the Congressional Record—

"The Vice-President laid before the Senate a communication from the Public Printer, transmitting, in response to a resolution of June 10, 1896, a report of Mr. James E. Teale, cashier of the Government Printing Office, relative to employees of that office who have accrued and unpaid leaves of absence; which, with the accompanying papers, was ordered to lie on the table and be printed."

The response of the Public Printer was laid before the Senate January 13, 1897, and constitutes Senate Document 59, 54th Congress, 2d session. This is the "estimate of the Public Printer," referred to and in part quoted in Finding V (Record, p. 3).

The letter of the cashier of the Government Printing Office, which constitutes the body of the response, is as follows:

"OFFICE OF THE PUBLIC PRINTER,
WASHINGTON, D. C., *January* 13, 1897.

"SIR: In submitting for your consideration the detailed information requested in the Senate resolution of June 10,

1896, I desire to state that this information has necessarily involved an incalculable amount of labor, and with the limited clerical force at my disposal the work has been prosecuted with more than reasonable diligence, care and dispatch, and, for the purpose of facilitating its early completion, much night work has been performed in the course of its preparation.

"The character of this work is such that it was essential that only those most familiar and experienced in this special line of work could be detailed in the preparation of this statistical information, and, of necessity, this work was required to be executed without any interruption to the current work of this division. The compilation of this data necessitated a careful and systematic examination of over 6,000 individual accounts, and some time has been lost in the progress of the work by reason of the absence of proper and accurate records in the matter of dates of appointments, dismissals, etc.

"The compilation of accounts contained in the accompanying statement, as taken from the records of this office, show that the number of persons having accrued and unpaid leaves of absence to their credit, together with the aggregate amount for the fiscal years of 1890, 1891, 1892, 1893, and 1894, respectively, are as follows:

Year.	Number of accounts.	Amount.
1890	95	$1,235.09
1891	399	8,980.02
1892	157	5,205.36
1893	468	14,317.10
1894	506	15,795.60
Total	1,625	$45,533.17

"I would suggest that the additional sum of $1,500 be recommended for the purpose of liquidating any additional claims that may subsequently appear to be equitable and just, but not included in the accompanying statement by reason of the absence of the necessary data to properly determine at this date the amount due in such cases.

"It will also be observed that the preparation of this detailed statement is based upon the individual leave of absence accounts of present and former employees of this office, notwithstanding the reasons why said leaves of absence were forfeited, lost, and unpaid.

"Your attention is also called to the fact that during the fiscal years of 1890 to 1893, inclusive, many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period.

"The amounts of *pro rata* leave which accrued to such persons are herewith included in the respective years in which they were earned.

"Your attention is also respectfully invited at this time to the carefully approximated estimate of $50,000, which was submitted in your letter of May 1, 1896, in reply to the Senate resolution of April 20, 1896, calling for information as to the amount necessary to liquidate these leave of absence claims. It will also appear upon a comparison between the aggregate amount as shown by the accompanying itemized statement and the estimated amount submitted May 1, 1896, that said estimate was conservative in its scope, and would have justified any anticipated legislation and averted subsequent delay by reason of the enormous amount of labor involved in the preparation of this detailed statement.

"In view of the anticipated legislation looking forward to the liquidation of the unpaid leave of absence claims of present and former employees of this office, as indicated by Senate resolutions, it would seemingly appear in the interest of justice and equity that the scope of such legislation should not be limited or confined simply to the fiscal years of 1890 to 1894, inclusive, but that its provision should also embrace such accrued and unpaid leave of absence claims which were also lost and forfeited during the fiscal years of 1887, 1888, and 1889, and to that end I would respectfully submit for your further consideration a supplemental statement, in detail covering such leaves of absences as were unpaid in the fiscal years of 1887, 1888, and 1889, respectively, as follows:

Year.	Number of accounts.	Amount.
1887	7	$207.26
1888	611	10,224.96
1889	116	1,894.21
Total	734	$12,326.43

"In pursuance of the provisions of an act of Congress approved June 30, 1886, authority was first given the Public Printer to grant leaves of absence of fifteen days with pay to the employees of the Government Printing Office who had rendered one year's continuous service in the office prior to the date when the act became a law. This beneficent legislation was subsequently amended August 1, 1888, by extending the leaves of absence to thirty days, with pay. This law, in the course of its operation, has been subjected to various interpretations and restrictions by the Treasury Department and Court of Claims, and as the result of recent legislation of Congress many objectionable features which have heretofore existed have been removed and you have therefore been enabled to administer the provisions of the law according to its original intent and purpose, and, as I have reason to believe, to the general satisfaction of its beneficiaries.

"Respectfully submitted.

"JAMES E. TEALE, *Cashier.*

"Hon. TH. E. BENEDICT,
"*Public Printer.*"

Then follows a long list of names, with the amounts due each one for each year, stated separately, from 1887 to 1894, inclusive.

The amount constituting the sum of all the amounts due for unpaid leaves of absence from the fiscal year ending June 30, 1887, to that ending June 30, 1894, aggregating fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60), was appropriated by "An act making appropriations to supply deficiencies in the appro-

priations for the fiscal year ending June 30, 1897, and for prior years, and for other purposes," approved July 19, 1897 (30 Stat. L., 134), as follows:

"That the Public Printer be, and he is hereby, authorized and directed to pay the employees and former employees and the legal representatives of deceased former employees of the Government Printing Office such sums as may be due said employees and former employees for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive; and the sum of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents, or so much thereof as may be necessary, is hereby appropriated for the purpose."

This appropriation included temporary as well as permanent employees, for the report of the Public Printer called attention (*ante*, p. 11) to the fact that "many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period."

The appropriation, therefore, having been made for the full amount of the Public Printer's estimate, it necessarily included these temporary employees.

Ruling of Comptroller, 1896.

The acts of 1894, 1895, and 1896 received a construction from the Comptroller of the Treasury by decision rendered July 22, 1896 (3 Comp. Dec., 27), the following quotation from which (pages 30, 31) shows the view taken by that officer:

"In reviewing this legislation, it is to be noticed that in the act of June 19, 1894, in which it was first provided that payment might be made to employees of the Government Printing Office of a money equivalent for leaves of absence which they had not taken, the words 'to pay *pro rata* leave of absence' were used instead of 'grant *pro rata* leave of

absence with pay,' which would have been the natural language to use if it was in fact intended by Congress that payment could only be made for the leave of absence actually taken, as was provided in the earlier acts relating to leaves of absence to employees of the Government Printing Office, and this seems to be emphasized by the use in the same sentence of the act of June 19, 1894, of the words, 'notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year.'

"The distinction thus drawn between 'pay for leave of absence' and 'leave of absence with pay' continues in the acts of March 2, 1895, and June 11, 1896, but seems to have been overlooked by both Mr. Foree and myself in our decisions above referred to. Any doubt about the deliberate use of these terms by Congress as meaning two different things seems clearly to be removed by the provisions in the acts of June 19, 1894, March 2, 1895, and June 11, 1896, which authorize payment to former employees of the Government Printing Office and to the representatives of those who have died. I am clearly of the opinion, therefore, that the decisions of the Acting First Comptroller and of myself, above referred to, were wrong, and that the Public Printer was authorized to pay to any employee severing his connection with the Government Printing Office the money equivalent of the *pro rata* leaves of absence which had accrued but which had not been taken by such employee, and that the provision was not intended to authorize the granting of more than thirty days' actual leave of absence in any one fiscal year to any employee of the Government Printing Office continuing in its employment.

"The intention of the various enactments since June 19, 1894, evidently is to authorize payment to any employee who severs his connection with the Government Printing Office of all the leave of absence which has accrued to but has not been taken by him, not exceeding thirty days, for the prior fiscal year, and the *pro rata* proportion of thirty days for the year in which he severs his connection. This I understand to be the practice of the Government Printing Office, for notwithstanding the fact that in terms the resignation of an employee is accepted to take effect after the expiration of the leave of absence granted to him, payment for such leave is made immediately upon the granting of the leave, and not at the expiration thereof, and, further-

more, no *pro rata* leave of absence is granted to an employee of that office who continues in the service."

II.—Brief of Argument.

Recapitulation of History of Leaves of Absence.

By the acts of 1886 and 1888 Congress allowed "a leave of absence, with pay," of fifteen and then of thirty days, including (in the act of 1888) "*pro rata* leave to those serving fractional parts of a year" (*ante*, pp. 4, 5). These acts, by decision of the Court of Claims in *Harrison v. United States* (26 C. Cls., 259), (*ante*, p. 5), did not have the effect of allowing payment for a leave of absence accrued but not taken.

By acts of 1894 and 1895 (*ante*, pp. 6, 7), the Public Printer was "authorized to pay *pro rata* leave of absence."

By act of 1896 (*ante*, pp. 7, 8), a number of new provisions relative to leaves were introduced, among which was "That it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year."

The Senate, contemporaneously with the enactment of that act, called upon the Public Printer to communicate the names of all employees "in the fiscal years 1890, 1891, 1892, 1893, and 1894, who failed to receive their annual leaves of absence during those fiscal years, and the amount due each person for each fiscal year separately on account of such failure." (*Ante*, p. 9.)

The Public Printer, in 1897, answered this resolution by transmitting the names of such persons not only for the fiscal years indicated, but going back to the fiscal year ending June 30, 1887, and also calling attention to the fact that "many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leaves of absence with pay," and he included in the list "the amounts of *pro rata* leave which accrued to such persons."

We have introduced in the statement of the case (*ante*, pp. 9–12) the full text of the letter of the cashier of the Government Printing Office transmitted by the Public Printer to the Senate in response to its resolution of inquiry, which letter, with the accompanying list, formed the basis of the appropriation made by Congress, as stated in Finding V (Record, p. 3). The terms of that letter are important as showing the subject-matter upon which Congress was acting and will, in the subsequent part of this brief, be referred to for that purpose. In introducing and referring to this letter as throwing light upon the construction of the appropriation act we are fully warranted by the following decisions of this court:

Romero v. United States, 1 Wall., 721.
Collector v. Richards, 23 Wall., 246, 258.
Blake v. National Banks, 23 Wall., 307, 319.
United States v. Steever, 113 U. S., 747, 755.
American Net and Twine Co. v. Worthington, 141 U. S., 468, 474.
Holy Trinity Church v. United States, 143 U. S., 457, 464.
Caha v. United States, 152 U. S., 211, 222.
The Delaware, 161 U. S., 459, 472.
Oakes v. United States, 174 U. S., 778, 796.

In the Court of Claims there is a special ground for the right to refer to documents of this kind, which form the basis of congressional action, in the provision of section 1076 of the Revised Statutes, that that court "shall have the use of all recorded and printed reports made by the committees of each house of Congress when deemed necessary in the prosecution of its business."

Accordingly the practice in that court is as stated in the opinion, delivered by the late Chief Justice Richardson, in *Badeau v. United States* (21 C. Cls., 48, 50):

"Courts take judicial notice of some circumstances outside of an act which go to show its meaning, and in doing so they frequently take a wide range of illustration and investigation from public records, public documents, general and local history, and other matters of such general and public notoriety as may be supposed to have been in the minds of all the legislators when the act was passed, but they never admit the opinions and evidence of individual witnesses for that purpose (*The Slaughter-house cases*, 16 Wall., 37; *Blake v. National Banks*, 23 Wall., 317; *Brown v. Piper*, 91 U. S. R., 42; *Blake v. United States*, 103 *id.*, 235; *Wilson v. Spalding*, 19 Fed. Rep., 304; *State v. New Orleans Pacific Railroad*, 30 La. Ann., 980; *People v. Stevens*, 71 N. Y., 527; *Fisher v. United States*, 15 C. Cls. R., 323; *Fendall v. United States*, 16 *id.*, 121)."

See also *Austin v. United States*, 25 C. Cls., 437, 454; affirmed, 155 U. S., 417.

No objection was made in the court below, and it is presumed none will be made here, to our reference to this letter of the Public Printer as throwing light upon the construction of the act passed in conformity with its recommendation.

July 19, 1897, Congress appropriated the full amount necessary to pay all claims "for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive," that appropriation including claims of both permanent and temporary employees.

Thus Congress, instead of granting only "a leave of absence with pay," now allows, as an alternative, "pay for *pro rata* leave of absence."

Effect of Change of Language.

It must be assumed that this change of language was deliberately made by Congress, and that, as the words mean different things, it was intended to make a change in the law.

In *United States v. Bowen* (100 U. S., 508) this court held

that the introduction of the one word "such" into a certain provision of law, when carried into the Revised Statutes, effected an entire change from what the law was previously to the enactment of the revision.

So, too, in *United States v. Fisher* (109 U. S., 143) it was held that the introduction of the words "in full compensation" into an appropriation act limited the officer to the amount so appropriated and changed the salary from what it had been prior to the enactment of the statute. The court said (p. 146):

"We cannot adopt the view of appellee unless we eliminate from the statute the words 'in full compensation' which Congress, abandoning the long-used form of the appropriation acts, has *ex industria* inserted."

To the same effect is *Converse v. United States* (26 C. Cls., 6, 10), quoted in brief for United States, p. 15.

In *Adams v. United States* (20 C. Cls., 115), recently cited with approval in *Glavey v. United States* (182 U. S., 595, 607), the opinion of the Court of Claims opens (p. 116):

"This suit grows out of a change by the Revised Statutes, possibly inadvertently made, in the compensation of inspectors of customs."

Yet, notwithstanding the suggestion that the change was due to inadvertence, effect was given to it and the law in its amended form enforced.

In the present case the circumstances leave no doubt that the change of phraseology was intentional and not accidental.

The acts of 1886 and 1888, allowing "leave of absence with pay," had been construed by the Court of Claims, in 1891, in the *Harrison* case (26 C. Cls., 259) not to entitle the employees to commutation for unused leave of absence. In full view of this decision, Congress, in 1894 and 1895, adopted a changed form of phraseology, "to pay *pro rata* leave of absence," and, in 1896, made this still more explicit by its

provision for "pay for *pro rata* leave of absence." Moreover, the Public Printer, in his report in answer to the Senate resolution, transmitted in 1897, said (*ante*, p. 12):

"This law, in the course of its operation, has been subjected to various interpretations and restrictions by the Treasury Department *and Court of Claims*, and as the result of recent legislation of Congress many objectionable features which have heretofore existed have been removed and you have therefore been enabled to administer the provisions of the law according to its original intent and purpose, and, as I have reason to believe, to the general satisfaction of its beneficiaries."

The reference to the interpretation of former statutes by the Court of Claims could have been only to the *Harrison* case, as that was the only existing decision of the Court of Claims on the subject of leaves of absence in the Government Printing Office. The Public Printer, therefore, meant to call the attention of Congress to the fact that recent legislation had removed the restrictive feature found by the Court of Claims to exist in prior legislation, and had permitted the allowance of a commutation for a leave of absence when not taken in kind. He also called attention to the fact that "many employees whose terms of service in the office were only for periods of less than one year have never received any *pro rata* leave of absence, with pay, which appears to have been the practice of the office during that period" (*ante*, p. 11).

In full view of this report of the Public Printer, calling attention to the decision of the Court of Claims in the *Harrison* case, Congress enacted the provision of the deficiency appropriation act of 1897 (*ante*, p. 13), by which nearly $60,000 was appropriated for the payment of "such sums as may be due said employees and former employees for accrued but unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive." Thus, Congress, by this retroactive provision, confirmed the view of the Public

Printer that recent legislation had removed the restrictive features found by the Court of Claims in prior acts, and, by granting the commutation of leave of absence to both permanent and temporary employees, in effect, decided that all employees, whether permanent or temporary, whether employed for more or for less than one year, were entitled, either to leave of absence with pay, or to pay *pro rata* for leave not taken.

The view taken by counsel for the United States of the effect of the act of 1896 is (Brief for United States, p. 34) that "it simply grants to temporary employees of the Government Printing Office *pro rata* leaves of absence, in kind, with pay, and allows them nothing more." But if this view is correct the original leave of absence acts of 1886 and 1888 (*ante*, pp. 4, 5) required no amendment, for they already allowed leave of absence with pay. An intelligent purpose must be ascribed to Congress in making this change of language, and that purpose is only satisfied by holding that a change was made in the law.

No Discrimination Between Permanent and Temporary.

The whole legislation taken together shows that Congress adopted as a feature of its policy towards the employees of the Government Printing Office the granting of leaves of absence or of money commutation for such leaves as are not taken in kind. The act has been construed in this sense by the Government Printing Office and by the accounting officers of the Treasury, so far as applies to the permanent employees of the office. The Comptroller, in his decision already quoted (*ante*, pp. 14, 15), thus states the practice:

"The intention of the various enactments since June 19, 1894, evidently is to authorize payment to any employee who severs his connection with the Government Printing Office of all the leave of absence which has accrued to but has not been taken by him, not exceeding thirty days, for the prior

fiscal year, and the *pro rata* proportion of thirty days for the year in which he severs his connection. This I understand to be the practice of the Government Printing Office, for notwithstanding the fact that in terms the resignation of an employee is accepted to take effect after the expiration of the leave of absence granted to him, payment for such leave is made immediately upon the granting of the leave, and not at the expiration thereof, and, furthermore, no *pro rata* leave of absence is granted to an employee of that office who continues in the service."

The reason for the non-allowance of the leaves of absence or commutation therefor to the present claimant is explained in Finding IV, page 3, as follows:

"No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave."

Is this discrimination between permanent and temporary employees warranted by the terms of the law?

So to hold would be to ignore the clause of the act of 1896, "that it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year." This clause is the last of several which embrace by specification every possible employee of the Government Printing Office, no matter in what way or for what time engaged. The paragraph defines in its opening clause, as widely as possible, the class of persons intended to be benefited. Its language is "The employees of the Government Printing Office, whether employed by the piece or otherwise." It then goes on to provide separately for "such employees as are engaged on piece-work," "those regularly employed on the *Congressional Record*," and "those serving fractional parts of a year." Thus, not only is the opening definition as comprehensive as possible, but the subsequent specification of classes shows that it was designed to include every class of persons

who could possibly be engaged at work in the Government Printing Office.

The position taken by counsel for the United States invites the court not only to disregard the comprehensive definition of "the employees of the Government Printing Office," and to limit the language so as to make it signify only "some of the employees of the Government Printing Office," but also to disregard the provision specially inserted for the benefit of "those serving fractional parts of a year."

"'The good expositor,' says Lord Coke, 'makes every sentence have its operation to suppress all the mischief; he gives effect to every word in the statute; he does not construe it so that anything should be vain and superfluous, nor yet makes exposition against express words' (Dwarris on Statutes, 577)." (*Fisher v. United States*, 15 C. Cls., 323, 327).

The Words "It Shall Be Lawful."

The Court of Claims holds (Rec., p. 5):

"In saying 'that it shall be lawful to allow pay for *pro rata* leave' the new statute imposed the general obligation on the Public Printer to allow the *pro rata* leave of absence with pay in kind on those serving fractional parts of a year. Though this statute is only permissive in terms, the authority must be construed to be a duty in general. The words 'it shall be lawful' are mandatory."

In support of this proposition many cases are cited (top of p. 6). One of them, very strongly in point, is that of *Supervisors v. United States*, 4 Wall., 435. There a statute providing that a board of township supervisors "may, if deemed advisable, levy a special tax to pay the debts of the township" was held mandatory to levy such tax wherever the debt had been reduced to judgment. In support of this conclusion the cases of *Mayor of New York v. Furze*, 3 Hill, 614, and *Mason v. Fearson*, 9 How., 248, were referred to. In the latter of these cases the following construction is

placed upon the identical words used in the statute now under discussion, 9 How., 259:

"The form of expression adopted here, it must be remembered, is employed in laws, and not contracts, and of course, if a well-established construction had been before given to it in laws by the courts under certain circumstances, it must be presumed to have been well known, and intended here under like circumstances. What are these circumstances? Whenever it is provided that a corporation or officer 'may' act in a certain way, or it 'shall be lawful' for them to act in a certain way, it may be insisted on as a duty for them to act so if the matter, as here, is devolved on a public officer, and relates to the public or third persons."

So, too, in *Hugg v. Camden*, 39 New Jersey Law, 620, a statute provided (p. 621):

"That if the full amount shall not be paid and satisfied within the time limited and appointed for the payment thereof, 'it shall and may be lawful' for the city council to cause the lands, tenements and real estate or such parts thereof as they may think proper, to be sold at public auction, etc."

The court says (p. 622):

"It is claimed, on behalf of the council, that they have a discretion in the collection of these taxes against lands, and may grant indulgence to delinquent tax-payers, by extending the time of payment, to meet the hardship, in some cases, of a strict enforcement of the law. The authority for this is sought in the words of section 64 of the charter—that it shall and may be lawful for the city council to cause the lands, or so much thereof as they may think proper, to be sold at public auction. But these words 'it shall and may be lawful,' in this statute, are mandatory, not directory and discretionary. The power conferred by them must be exercised. It is a settled construction, that where a public or municipal corporation, or body, is invested with power to do an act which the public interests require to be done, and has the means for its complete performance placed at its disposal, not only the execution, but the proper execution of the power

may be insisted on as a duty, though the statute conferring it be only permissive in terms."

Application of Authorities.

The intent of Congress in using the permissive form in the act of 1896 is almost too clear for controversy. Previous acts allowed a leave of absence with pay. If this leave of absence were taken, there would be an end of the matter, and the employee would have no claim for any sum of money in commutation. This statute re-enacts laws already in force, and provides in peremptory terms that the employees of the Government Printing Office "shall be allowed leaves of absence with pay." The terms of the enacting clause are broad enough to include all the employees, even though employed by piece-work, for in express terms it extends to all of them, "whether employed by the piece or otherwise." As, however, it might readily happen that a time could not easily be found at which the leave of absence could be taken, an alternative is provided, of which the Public Printer is at liberty to take advantage if he deems it for the better interest of the Government to do so, "that it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year; also to allow pay for *pro rata* leave of absence," etc.

It was permissible for the Public Printer to allow either the leave of absence in kind, or *pro rata* compensation for unused leave. To hold that it was permissible to allow neither leave of absence in kind nor pay for accrued but unused leave would impute to Congress the absurd purpose of allowing to the employees of this office the alternative of a leave of absence or pay for leave not taken, and then permitting them to be deprived of both. To put it from the converse point of view, it would be to hold that upon an employee going out of office, whether by resignation, discharge, or death, with accrued leaves standing to his

credit, it would be "lawful"—that is, permissive—for the Public Printer to make him a grant of a sum of money, but that if the Public Printer made him no such grant he had no legal means of enforcing his right either to the leave of absence or to the pay for unused leave. A case could readily be imagined in which of two men working side by side and having the same amount of accrued leave due them, the accrued leave of absence would be paid to one, while it would be denied to the other.

It is contended by counsel for the United States (conclusion of Brief, pp. 34, 35) that—

"The Public Printer had no right to pay an employee for a leave of absence after his connection with the Government Printing Office had been severed, but if the Public Printer had desired to pay an employee who was serving for a fractional part of a year in that office, and whose connection with the office was about to be severed, he might have granted him a *pro rata* leave with pay, and provided that at the expiration of said leave he should be discharged from further employment in that office, and have paid him for said *pro rata* leave at the time he actually discontinued his work in said office."

But if the act of 1896 means anything, it means to confer this "pay for *pro rata* leave of absence" upon the employees of the Government Printing Office as an absolute right and to take away from the Public Printer the power to give it to one and withhold it from another by a mere difference in the form of dismissal.

Failure to Apply for Leave or for Mandamus.

It is insisted in the brief for the United States (pp. 3–7) that the proper course of the claimant was to apply for a leave of absence during his term of service, and, if it were refused, to apply for a mandamus on the Public Printer to compel its allowance.

One answer to this suggestion is that at no time did the claimant become entitled to demand the immediate grant of a leave of absence. None of his periods of service extended to as great a length as a year at a time. An application to the Public Printer for a leave of absence would have been futile "for the reason that, under the rules adopted by the Public Printer regarding leaves of absence, persons temporarily employed were not granted leave" (Finding IV, Record, p. 3).

The adoption of this rule constituted an exercise of the option vested by law in the Public Printer against the allowance of leave in kind. Were a demand for leave otherwise necessary it would clearly be excused under the rule stated in *United States v. Lee*, 106 U. S., 196, 202:

"The proposition is thus expressed by this court at its last term in *Hills v. Exchange Bank*, 105 U. S., 319, as the result of the cases above cited: 'It is a general rule that when the tender of performance of an act is necessary to the establishment of any right against another party, this tender or offer to perform is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.'"

The opinion of the Court of Claims concedes, and properly (p. 5), that "the Public Printer might control the time of leaves and refuse the same in an exigency." The Public Printer being invested by law with discretion either to grant the leave of absence in kind or to pay its commuted value, no mandamus was available to compel its allowance in kind. The claimant at no time served for a whole year. When he was notified that his services were no longer required, his right under the statute first accrued. It would have been useless then for him to apply for a mandamus to grant him a leave of absence, for he had been placed out of service for an indefinite period.

Another reason that an application for mandamus was not only not required, but would have been absolutely improper, is found in the very nature of the relation of the

claimant to his official superior. The Public Printer was not only the appointing power, but he was also the directing power and the removing power. The claimant, as a compositor temporarily employed, was one of those purely inferior and subordinate officers aptly described in the *Twenty Per Cent. cases* (13 Wall., 568, 575):

"Ministerial offices are those which give the officer no power to judge of the matter to be done, and which require him to obey some superior, many of which are merely employments requiring neither a commission nor a warrant of appointment, as temporary clerks or messengers."

"Obedience to orders" is named first among the "duties of a moral character" of officers by Professor Goodnow (2 Comparative Administrative Law, 82). To such an officer the statement in Mechem on Public Offices (section 523) would emphatically apply:

"It is not within the scope of the duties of a ministerial officer to pass upon the validity of laws, instructions, or proceedings *prima facie* valid, and requiring his action. His only duty in such a case is obedience."

Winthrop, in his Military Law (vol. 1, p. 812), thus states the rule in the military service:

"The obligation to obey is one to be fulfilled without hesitation, with alacrity, and to the full; nothing short of a physical impossibility ordinarily excusing a complete performance."

And he adds later on (p. 813):

"Even where the order is arbitrary or unwise, and its effect must be injurious to the subordinate, he should first obey, postponing till after compliance his complaint and application for redress."

And the rule can be no different in the civil service. The administrative machinery of the Federal Government is now

so vast and complicated that immediate compliance on the part of all inferior officers with the commands of their superiors is essential to its efficient operation. This court has said of a letter-carrier, *United States v. Post* (148 U. S., 124, 133):

"The postmaster was the agent of the United States to direct the employment, and if the letter-carriers had not obeyed the orders of the postmaster, they could have been dismissed. They did not lose their legal rights under the statute by obeying such orders."

Even in private employment the same inequality is recognized by this court as a practical truth. Having before it the Utah statute, prohibiting the employment of miners for more than eight hours, this court said, *Holden v. Hardy* (169 U. S., 366, 397):

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority."

This court has said in a case of mandamus, *United States v. Boutwell* (17 Wall., 604, 607):

"It is an imperative rule that previous to making application for a writ to command the performance of any particular act, an express and distinct demand or request to perform it must have been made by the relator or prosecutor upon the defendant, and it must appear that he refused to comply

with such demand, either in direct terms or by conduct from which a refusal can be conclusively inferred. Thus it is the personal default of the defendant," etc.

It would have to be a severe case of oppression under color of office, which would even justify a mere subordinate in the Government Printing Office, and a temporary one at that, in making a peremptory demand upon the Public Printer, the head of that great office, and then, upon refusal, in treating him as in personal default. Much less will the subordinate be treated as himself in default because he did not invoke the compulsory process of the courts against his official superior.

Of course, if the claimant in this case was entitled to make a peremptory demand for his leave of absence and on the refusal of the Public Printer to apply to the courts for a mandamus to compel its allowance, so were all the other temporary employees. The idea of two hundred employees of the Government Printing Office, all of them only temporarily in service, peremptorily demanding of the Public Printer their right to an immediate leave of absence, and then applying to the courts for relief by way of mandamus, suggests a subversion of all established discipline which stamps the proposition as impossible of realization in a well-ordered administrative system. A theory so impracticable of application to the actual conditions of the Government service should be equally untenable when set up as a defense to an otherwise valid claim.

But it is unnecessary to consider further the question whether in any case the writ of mandamus can be granted at the suit of a subordinate officer against his superior as a relief from official oppression. No such use of the writ has ever been known in the courts of the United States. And there was not in this case any oppressive conduct on the part of the Public Printer. Indeed, it is but fair to add that he was not guilty of any violation of law whatever. He exer-

cised a lawful discretion in the adoption of the rule or practice, set forth in Finding IV (Record, p. 3), not to allow leave of absence to persons temporarily employed, and the only consequence of his action in so doing was to entitle the temporary employee, to whom such leave was not by the rules accorded in kind, to the statutory alternative of *pro rata* pay for such leave.

The true course for a subordinate officer to adopt in such a case was the precise one which was in fact adopted by this claimant. He obeyed without question the orders given him at the time, relying only upon the laws of his country for the vindication of his legal rights. At the proper time and within the six years allowed by law (R. S., sec. 1069) he made his application in the regular course of justice to the Court of Claims for his statutory *pro rata* pay for his leave of absence.

An application for mandamus would have been wholly inappropriate as a means of collecting his money claim for the commutation, or, to use the statutory phrase, "*pro rata* pay," for leave of absence. The writ of mandamus is available only where there is no other legal remedy. It never applies where the claim is a money demand against the United States "founded upon a law of Congress," cognizable under the general jurisdiction of the Court of Claims (*United States v. Knox*, 128 U. S., 230, 235). Even before the establishment of the Court of Claims, mandamus was held to be an inappropriate remedy for the collection of a claim against the United States (*Reeside v. Walker*, 11 How., 272, 290).

The claimant, therefore, not having received the "leave of absence, with pay," became entitled to the statutory alternative of "pay for *pro rata* leave of absence." This being a money demand against the United States, the only appropriate forum for its enforcement was the Court of Claims. No precedent demand was necessary (*Clyde v. United States*, 13 Wall., 38).

Acceptance of Payment for Services No Bar.

It is also claimed on behalf of the United States (pp. 8, 9) that the claimant is barred from the assertion of this demand by having accepted payment in full for the services rendered by him in the Government Printing Office. There is no finding in the record as to any such acceptance, further than the general terms of Finding II (p. 3):

"During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months."

It is difficult to understand upon what theory the acceptance of payment for services rendered can be set up in bar of a claim of a different character for *pro rata* pay for leave of absence arising under distinct statutes, of which statutes he has never had any benefit whatever. Even the receipt and acceptance, as of full salary, by an officer has never been held to be a bar to a claim for a higher salary (*United States v. Langston*, 118 U. S., 389). Even an express stipulation to waive official compensation conferred by law is against public policy, and will not be enforced against the claim of the officer (*Glavey v. United States*, 182 U. S., 595). Much less can any such bar arise in the present case, where there has been no waiver of the claimant's rights under these provisions of law, nor any act from which an intention to waive them can be inferred.

Examining this theory in the light of actual conditions, we ask: Is it seriously contended that it was the duty of this claimant, working presumably for his daily bread, to refuse all payment tendered him for his daily services until his claims under the leave-of-absence acts were also settled? And is it contended that if he did accept payment for his

daily services he thereby waived and released all claim for his *pro rata* pay under the leave-of-absence acts? If so, it would be in vain for Congress to attempt to confer rights upon any officials in a subordinate position, for those rights could be taken away from them by the officers appointed to pay them by the easy means of paying them less sums than what the law allows, or, as in this case, paying them for a Government obligation of one class and then pleading that payment in settlement of one of another and different class.

Counsel for the United States in support of this point quote (p. 9) from *United States v. Garlinger*, 169 U. S., 316, 322. Were the quotation continued through the next paragraph, it would appear that these circumstances were not regarded as of controlling force, but only as tending to show the construction put by the parties themselves upon a statute which the court had already construed adversely to the claimant's demands. "We do not want to be understood as saying that the mere fact of receiving money in payment will estop a creditor" (p. 323).

Again, the question involved in that case was as to a double per diem claimed where only a single one had been paid and accepted. This court regarded the pay for each day's service as capable of being regarded as an indivisible unit, and therefore thought that if each day had been paid for as only a single one, there was some presumption against a subsequent claim that it was to be paid for as double service.

In the present case there is no complaint as to the claimant's daily or even hourly pay, which he has received in full in accordance with the statutes defining it.

The rights now claimed are distinct rights arising under a different statute from that defining his daily and hourly rate of pay, and there has never been a settlement of his claim under those acts.

No Accumulation of Leaves.

As the claimant in this case in no instance served for a full year, it is difficult to see what bearing the provision against accumulation of leaves has upon his case, as contended in the brief for the United States (pp. 29, 30).

The act of June 19, 1894, is admitted by counsel to have "permitted the leaves of regular employees to accumulate to the extent of two years, and this provision was also incorporated in the act of June 11, 1896."

It is true that it is added immediately afterwards, "but nowhere are the leaves of those serving for fractional parts of a year permitted to accumulate at all."

But no one term of service of this claimant was as long as a year, and his entire service did not aggregate two years; hence there was no accumulation of leaves. It is difficult to see also what effect the accumulation, if it existed, could have, except to increase the claim. The law does not say that an accumulation shall render the claim void, but that "such leaves of absence shall *not be allowed* to accumulate from year to year"—evidently meaning that they shall not be allowed by the Public Printer so to accumulate.

The failure to allow either the leave of absence in kind or the *pro rata* pay therefor would seem to constitute an infraction of the law by the Public Printer, if by any one—not by the employee, who was without power to exercise the choice between taking the leave in kind and the money commutation for the same. The discretion which of these two to allow was vested by law in the Public Printer. If the Public Printer by neglecting the allowance of leaves permits them to accumulate, it is he and not the employee who has allowed the accumulation contrary to the policy of the law.

This point, however, need not be further considered, as the leaves in this case did not, within any true construction

of the law, "accumulate from year to year." Each term of service stood on a separate footing, and no one of them was as long as a year.

Pay for Unused Pro Rata Leave Intended.

It is next insisted (p. 30) that when Congress enacted "that it shall be lawful to allow pay for *pro rata* leave to those serving fractional parts of a year," it failed to express with accuracy the idea that the pay was to be for an accrued but unused leave, and that, instead of "*pro rata* leave," it should have said "unused and accumulated *pro rata* leaves."

The difficulty with this point is that it fails to grasp the distinction between "leave of absence with pay" and "*pro rata* pay for leave of absence." All leaves of absence provided for by law are with pay. This is expressed in almost all the statutes quoted (Brief for United States, pp. 22–28), and notably was so in the leave of absence acts for the Government Printing Office prior to the decision in the *Harrison* case (*ante*, pp. 4, 5). Where a leave of absence without pay is intended, it is always expressly so stated.

Again, the words "*pro rata*" would have no meaning if the law were not intended to apply to accrued leaves of absence which had not been taken. If the leave of absence had been taken in kind the employee, whether permanent or temporary, would receive his full pay during the continuance of the leave. Such is the law in all departments where leave of absence is granted.

The enactment of "pay for *pro rata* leave" was the introduction of a new and exceptional feature in the legislation for the Government Printing Office, resulting in giving its employees not merely the "leave of absence with pay" to which the original legislation of 1886 entitled them, but pay *pro rata* to the time of their employment for the leave of absence to which they had become entitled, but which they had failed to receive in kind. Such is the construction

which the Court of Claims has, by its opinion, placed upon the act of 1896. No other could be adopted without failing to give effect to the new and emphatic language used in that act, distinguishing it from the earlier legislation of 1886 and 1888.

The Act of 1897.

It is next contended (Brief for United States, p. 30) that the act of 1897, providing for the payment of accrued and unpaid leaves of absence for the fiscal years from 1887 to 1894, affords evidence that Congress did not consider those employees entitled to such payment without special legislation for their benefit. But so far as the act is an expression of opinion on the part of Congress, it constitutes rather the highest and most formal possible evidence that Congress considered that they were entitled to it. As such acts are construed in *United States v. Realty Company*, 163 U. S., 427, 440, it was a decision that these claims constitute debts of the United States and appropriating money for their payment.

The furthest that such an act could be said to go in the direction suggested by counsel for the United States was that Congress recognized that there was no other mode of collecting such a claim than through special legislation.

In view of the decision of this court in *Harrison v. United States*, 26 C. Cls., 259, the claims were certainly of the class of which this court has said (163 U. S., 440):

"The debt could obtain no recognition in a court of law."

No such considerations apply to the claims arising subsequently to that time, because the law was changed by the new legislation which culminated in the act of 1896 (p. 67).

If we may regard the act of 1897 in the light of a declaration of policy on the part of Congress, as apparently counsel for the United States would do, the only effect it can be said to have in that direction is that Congress was so convinced

of the justice of the policy established by the act of 1896 for the future that by the act of 1897 it determined to make the same principle retroactive and to recognize claims extending clear back to the enactment of the original leave of absence law in 1886.

Thus, so far from throwing the least doubt upon the construction placed by the Court of Claims upon the act of 1896 the act of 1897 tends strongly to support that construction as in harmony with the views of the same Congress which passed it.

The communication of the Public Printer, upon which the legislation of 1897 was based, showed upon its face that it was based upon the idea that the *pro rata* pay due the employees for accrued and unpaid leaves of absence was a debt which Congress ought to liquidate. Referring clearly to the act of 1896, it is said (*ante*, p. 12), that "as the result of *recent legislation* of Congress, many objectionable features which have herotofore existed have been removed." As the writer in the previous clause of the same sentence had referred to the interpretation of this court, and as the only interpretation of these statutes was that contained in the *Harrison* case, it is perfectly clear that in the opinion of that officer the objectionable feature deemed to have been removed by recent legislation was the denial of *pro rata* pay for accrued but unused leaves of absence. In this light the enactment of 1897, alluding as it does to the sums thereby appropriated as "due said employees and former employees for accrued and unpaid leaves of absence for the fiscal years 1887 to 1894, both inclusive," affords proof positive that Congress determined upon carrying out the liberal policy of the act of 1896 clear back to the original enactment of the leave of absence law from the beginning of the fiscal year ending June 30, 1887.

Counsel for the United States (pp. 19, 20) seem to suppose the purpose of the act of 1897 to have been to allow these employees their pay for past years for leaves of absence

which they had had without pay. But this is inconsistent with the terms of the appropriation as well as with the letter from the Government Printing Office which formed the basis of the appropriation. It is, moreover, directly contradicted by Finding V (Record, p. 3) that "all employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all *accrued but unused* leaves of absence."

Revised Statutes, Sections 1764, 3648.

It is exceedingly difficult to appreciate the bearing of the argument (p. 31) attempted to be based upon these sections. This claim is not for "services rendered by claimant during the leaves of absence to which he was entitled, but which he did not receive." It is, on the contrary, for the commuted value of a leave of absence originally conferred upon this class of employees by the act of August 1, 1888, but which was converted into a money claim by the subsequent legislation. In this view the claim is in no respect for "extra services;" and even if it is, the payment is "expressly authorized by law."

The legislation now under consideration is long subsequent to the enactment of section 1764, and hence would repeal any portion of that section inconsistent with it or the whole, if necessary.

As for section 3648, a reading of the entire section shows that it has no application.

Anomalous Legislation.

The Court of Claims has well described in the passage of its opinion set out in the brief for the United States (p. 32) the legislation which it has construed as "anomalous." That fact plainly appears upon a comparison of its terms with those

of other leave-of-absence acts cited at pages 22 to 28 of the brief of counsel. The more anomalous it is, the more reason there is for construing it as meaning something different from other acts.

Exceptional language, departing in so marked a degree from that used in relation to all other branches of the public service, means something different from what the former acts did. As this court said of a new and different phrase first introduced in an act of Congress:

"We cannot adopt the view of appellee unless we eliminate from the statute the words 'in full compensation,' which Congress, abandoning the long-used form of the appropriation acts has, *ex industria*, inserted." (*United States v. Fisher*, 109 U. S., 143, 146.)

Expediency.

And, as the Court of Claims said in the same case, in answer to an argument of inexpediency urged upon it by the claimant in that case as it is urged by the Government in this:

"With the expediency or inexpediency of the policy of Congress in thus reducing salaries temporarily, by provisions in annual appropriation acts, we have no concern. However objectionable such a course may seem to others, it is within the constitutional power of Congress, and must be respected and obeyed and not circumvented or evaded by the courts." (*Fisher v. United States*, 15 C. Cls., 323, 329.)

Literal Construction Required.

A construction on the ground of inconvenience is urged (p. 33) on an authority which declares that under certain circumstances "a statute may be construed contrary to its literal meaning." The cases in which any such construction is admissible are very few and far between.

The rule which this court now acts upon, and the only safe

rule, is that of literal construction laid down in *Dewey v. United States*, 178 U. S., 510, 520:

"Of course, our duty is to give effect to the will of Congress touching this matter. But we must ascertain that will from the words Congress has chosen to employ, interpreting such words according to their ordinary meaning as well as in the light of all the circumstances that may fairly be regarded as having been within the knowledge of the legislative branch of the Government at the time it acted on the subject."

This court overrules most distinctly (p. 521) the argument made in the brief for the United States based upon the general consideration of a supposed public policy.

The act of 1896 is entitled to be enforced in accordance with its terms and not explained away.

Purpose of the Law.

While this act is different from leave-of-absence acts in other departments of the Government, its object is clear. The allowance of the *pro rata* pay to these temporary employees is simply a humane provision at the end of their period of temporary service to enable them to support themselves during the period when they should be seeking other employment.

It is a fact too well known to escape judicial notice that not only is trade of every kind more active at the national capital during the sessions of Congress, but that this is especially true in regard to the trade of the printer.

An examination of the dates during which this particular claimant was from time to time employed in the Government Printing Office (Finding I, Record, p. 2) discloses that he was, as a rule, employed there during the very times of the year when he could probably have secured ready employment at his trade in private printing offices in the city, and was laid off at the very times when work was beginning

to be dull in the private offices and when it would be most difficult to secure remunerative employment.

Every reason which could induce Congress to grant *pro rata* pay for leave of absence to the regular employees of the Government Printing Office applies with equal, if not greater, force to its allowance to those serving fractional parts of a year. Such pay at the expiration of their periods of employment is nothing more than a proper and humane provision to enable them to support their families while looking for new work.

Legislative Precedents.

The purpose is the same which has induced Congress, at the close of our various wars, to grant extra pay to the officers and sometimes also to the enlisted men, necessarily discharged at the expiration of the war. The purpose of such legislation is forcibly stated in *United States v. Merrill* (9 Wall., 614, 616):

"The obvious purpose of that provision was that when they came to be discharged they should not be left without any compensation during the period which in all probability would elapse before they would be able to establish themselves in remunerative business pursuits."

As to the similar provision in the Mexican war, see *United States v. North* (112 U. S., 510). Other legislation of a similar character is considered by the Court of Claims in *Schaeffer v. United States* (11 C. Cls., 730); *Hildeburn v. United States* (13 C. Cls., 62); *Duryea v. United States* (17 C. Cls., 24), and *Cleary v. United States* (35 C. Cls., 207).

While these precedents of legislation are not required in order to justify the action of Congress, they go far to explain its meaning and purpose in the enactment of these statutes.

Hardships Not Involved.

But while the reason of the law is intelligible in the light of the legislation in analogous cases, we think counsel for the United States misconceive the decision of the Court of Claims if they suppose it (Brief for United States, p. 22) to be in any degree based upon the ground of hardship. No such ground was taken in the argument for the claimant or appears in the opinion of the court below. The claim rests not on a vague appeal for sympathy with the hardships of the claimant, but upon the solid foundation of an act of Congress expressly conferring upon the class of employees to which he belongs the right to an allowance of "pay for *pro rata* leave."

Leaves of Absence in Other Departments, &c.

A number of acts providing for leaves of absence in other departments of the Government service are quoted (Brief for United States, pp. 22–28). Nothing could better illustrate the exceptional character of the legislation in regard to leaves of absence in the Government Printing Office than these statutes relating to other branches of the public service. These acts allow leaves of absence of fifteen, twenty, or thirty days, as the case may be, generally adding the words "with pay." In no instance do they provide for "*pro rata* pay for leave." They must therefore necessarily be construed as the Court of Claims construed the original leave of absence laws for the Government Printing Office in *Harrison v. United States*, 26 C. Cls., 259—that is, as allowing only the leave itself, not commutation for it if not taken.

When Congress, in full view of that decision, changed the law the decision rendered by the Court of Claims simply gives effect to the purpose declared by that change of language. The opinion says (Record, p. 6):

"It was the purpose, if language means anything, for fractional time workers to have the *pro rata* leave with the pay for the time of such leave as the employee might be entitled to have. We must presume the Congress meant what is said."

No General Precedent Established.

It is stated in the brief for the United States (foot of p. 28) that this judgment establishes a precedent embracing every department of the Government where leaves of absence are granted.

Unless it is shown that some other department is by the express terms of some statute entitled to "pay for *pro rata* leave," there can be no claims in any such department for pay for an accrued but unused leave.

It is stated in the opinion of the court (Record, p. 4), and correctly stated, that counsel for the claimant accept the decision in *Harrison v. United States* as a correct exposition of the law at the time it was rendered. If this concession is well founded, no other department has any officials or employees who are entitled to *pro rata* pay for unused leave; for the legislation relative to leave of absence in all these departments is the same as it was in the Government Printing Office when the *Harrison* case was decided.

Thus it is demonstrable beyond question that the decision rendered establishes no such precedent, but affects only the Government Printing Office.

This is practically conceded six pages later (p. 34), where the act as construed by the court below is correctly described as limited "to a comparatively few employees, serving for fractional parts of a year in the Government Printing Office," and criticised as absurd on that very ground.

Exceptional Language, Exceptional Construction.

Exceptional language must have an exceptional construction. It cannot be assumed that Congress, when legislating for the Government Printing Office in language differing in so marked a degree from that employed in provisions for leaves of absence in every other department of the Government, intended nothing more than was provided for such other departments. That intention is demonstrated by the terms of the law itself. It is to allow a leave of absence, with pay, for thirty days in each year to all the employees of the Government Printing Office, with pay for *pro rata* leave of absence accrued, but not taken, in the exact proportion of the term for which each employee has served, whether for the whole or a fractional part of a year.

Conclusion.

As a summary of the whole case we quote the following from the opinion of the Court of Claims (Record, p. 6):

"If we shall hold that the Public Printer could at will refuse the leave of absence in kind as well as the pay for the allowed but unused leaves, then employees serving fractional parts of a year would at the will of the Public Printer be deprived of both the leave and the pay. But this was not intended. It was the purpose, if language means anything, for fractional time workers to have the *pro rata* leave with the pay for the time of such leave as the employee might be entitled to have. We must presume the Congress meant what is said."

Also the following (p. 6):

"Where, then, a leave has not been granted in the case of a temporary employee detained because of the exigencies of the public printing service or discharged without fault on his part because his services are not needed, the payment of a money equivalent for the unused *pro rata* leave is conferred

by the statute. If the temporary employee is entitled to leave with pay for that *pro rata* period of recreation, it follows that he should have pay for the leave denied to him."

The judgment of the Court of Claims should be affirmed.

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